

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

STEVEN POLITO,

Plaintiff,

v.

WESTERN CAPITAL MORTGAGE,  
INC., et al.,

Defendants.

CASE NO. C16-5613RBL

ORDER GRANTING MOTION TO  
DISMISS

THIS MATTER is before the Court on Defendant Caliber Home Loans' Motion to Dismiss [Dkt. #31]. Plaintiff Polito has not filed a response, and the deadline for doing so was January 23. Caliber asks the Court to construe Polito's failure to respond as an admission that the motion has merit under Local Rule 7(b)(2): "Except for motions for summary judgment, if a party fails to file papers in opposition to a motion, such failure may be considered by the court as an admission that motion has merit."

Caliber's Motion does have merit. A plaintiff's complaint must allege facts to state a claim for relief that is plausible on its face. *See Aschcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). A claim has "facial plausibility" when the party seeking relief "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct

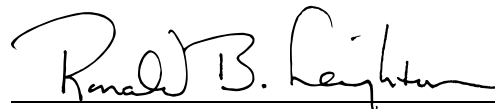
1 alleged.” *Id.* ). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief”  
2 requires more than labels and conclusions, and a formulaic recitation of the elements of a cause  
3 of action will not do. Factual allegations must be enough to raise a right to relief above the  
4 speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

5 Polito has failed to state a plausible claim against this standard. Most of his claims were  
6 waived by his failure to enjoin the foreclosure sale, and his fraud claim is inadequately pled  
7 under Rule 9. His negligence claim is barred by the economic loss rule and none of his claims  
8 are supported by any plausible factual allegations. His “split the note” claim is also not viable.  
9 Finally, as Caliber points out, this is Polito’s second “bite at the apple”—his prior, similar case  
10 was dismissed in 2016.

11 The Motion to Dismiss is GRANTED and Polito’s claims against Caliber Home Loans  
12 are DISMISSED with prejudice and without leave to amend.

13 IT IS SO ORDERED.

14 Dated this 16<sup>th</sup> day of February, 2017.

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17 Ronald B. Leighton  
18 United States District Judge  
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